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MAR 28 2008

OFFICE OF PETITIONS

In re Application of :
Drummond, et al. :
Application No. 09/811,718 : DECISION ON PETITION
Filed: March 19, 2001 :
Dkt. No.: D-1120 R2 :

The above-identified application has been directed to the Office of Petitions for consideration of the "Request for Clarification of the Record," filed October 8, 2003. This matter is being treated under 37 CFR 1.10(e) to accord a receipt date of March 23, 2003 to an appeal brief, copy of which was submitted October 8, 2003.

The petition is GRANTED TO THE EXTENT INDICATED ION HEREIN.

Applicants allege an appeal brief was timely filed May 23, 2003 in response to the Notice of Appeal filed April 9, 2003. Applicants have provided a copy of a return postcard bearing a USPTO receipt stamp date of May 27, 2003. Applicants have provided a copy of the appeal brief, which includes a certificate of mailing in accordance with 37 CFR 1.10.

In accordance with 37 CFR 1.10(e):

"Any person mailing correspondence addressed as set out in § 1.1(a) to the Office with sufficient postage utilizing the "Express Mail Post Office to Addressee" service of the USPS but not received by the Office, may petition the Director to consider such correspondence filed in the Office on the USPS deposit date, provided that:

- (1) The petition is filed promptly after the person becomes aware that the Office has no evidence of receipt of the correspondence;
- (2) The number of the "Express Mail" mailing label was placed on the paper(s) or fee(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a copy of the originally deposited paper(s) or fee(s) that constitute the correspondence showing the number of the "Express Mail" mailing label thereon, a copy of any returned postcard receipt, a copy of the "Express Mail" mailing label showing the "date-in," a copy of any other official notation by the USPS relied upon to show the date of deposit, and, if the requested filing date is a date other than the "date-in" on the "Express Mail" mailing label or other official notation entered by the USPS, a showing pursuant to paragraph (d)(3) of this section that the requested filing date was the date the correspondence was deposited in the "Express Mail Post Office to Addressee" service prior to the last scheduled pickup for that day; and

(4) The petition includes a statement which establishes, to the satisfaction of the Director, the original deposit of the correspondence and that the copies of the correspondence, the copy of the "Express Mail" mailing label, the copy of any returned postcard receipt, and any official notation entered by the USPS are true copies of the originally mailed correspondence, original "Express Mail" mailing label, returned postcard receipt, and official notation entered by the USPS.

The instant petition does not satisfy 37 CFR 1.10(e)(3) in that a copy of the Express Mail label showing a "date-in" has not been provided.

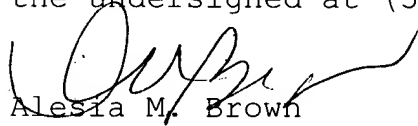
However, in view of the postcard receipt, the appeal brief is deemed to have been timely received May 27, 2003, the date indicated on the copy of the return postcard submitted herewith.

The original appeal brief referenced by petitioners has not located in the application file. The copy submitted October 8, 2003 has been entered into the record.

Petitioners are entitled to a refund of the \$1,480.00 extension of time fee charged October 10, 2003. As petitioners have not expressly requested a refund of any unnecessary fees, petitioners may request a refund by writing to the Finance Office, Refund Section. A copy of this decision should accompany any request for refund.

The application file is being forwarded to Technology Center 3600 for consideration of applicants' request filed December 13, 2006.

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3205.

A handwritten signature in black ink, appearing to read 'Alesia M. Brown', is written over the printed name.

Alesia M. Brown
Petitions Attorney
Office of Petitions